

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-219644.4

**DATE:** July 7, 1986

**MATTER OF:** Department of the Army--Request for  
Reconsideration

**DIGEST:**

Determination by agency personnel conducting the evaluation of proposals that protester had submitted an alternate proposal supports conclusion that protester's proposal, as viewed in its entirety and as reasonably interpreted, included offer of alternate system. Since the contracting officer did not make award on the basis of initial proposals and the alternate proposal was within the competitive range, the requirement for meaningful discussions extended to the alternate proposal.

The Department of the Army requests reconsideration of our decision in San/Bar Corporation, B-219644.3, Feb. 21, 1986, 86-1 C.P.D. ¶ 183. In that decision, we sustained in part the protest of the San/Bar Corporation (San/Bar) against the award of a contract to a consortium of Siemens A.G./AT&T Technology Group (Siemens/AT&T) under request for proposals No. DAJA37-84-R-0430, issued by the Army for the supply and installation of key telephone systems in the Federal Republic of Germany. We affirm our prior decision.

The Prior Decision

In August 1984, the Army solicited offers for meeting the Army's requirements over a base year and 2 option years for the supply and installation of standard key telephone systems (block "A" items), electronic key telephone systems (block "B" items), line/trunk conditioning equipment (block "C" items) and inside cable distribution systems (block "D" items) in Germany. The solicitation provided that award would be made by block to the responsible offeror submitting the low, technically acceptable offer for each block.

With regard to block "B" for electronic key telephone systems, San/Bar, in addition to offering the ITT Telecom Products Corporation (ITT) 3100 electronic key telephone system which was the subject of San/Bar's block "B" protest, also offered the AT&T Horizon 32A system and two other systems. Siemens/AT&T offered AT&T's Horizon and three other systems under block "B," while a consortium of ITT/Standard Elektrik Lorenz (ITT/SEL) offered ITT's 3100 system.

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While contracting officials, based upon the evaluation of the initial proposals, included the ITT 3100 system among the electronic key telephone systems which, overall, were technically acceptable, it is apparent that they did so only with reservations. Among the problems which they identified was the extent to which the ITT 3100 system met the requirement of specification 2.19 that the required touch-tone-type telephones be able to receive and transmit both rotary (dial) and touch-tone signaling from central district offices.

San/Bar stated in its initial proposal that if the central office is rotary, then it would be necessary to "provide commercially available Tel-Touch to Pulse Converters" between the touch-tone telephones and the central office. The Army's technical evaluation of the ITT 3100 system indicated that the system would accept either touch-tone or rotary signals, but not both at the same time without the provision of additional equipment.

Although the Army informed ITT/SEL in questions submitted to that firm in March 1985 of the Army's concern as to whether the ITT 3100 system satisfied specification 2.19, neither in the questions directed to San/Bar in March 1985 nor in the subsequent two rounds of best and final offers (BAFO's) did the Army inform San/Bar that its offer of the ITT 3100 system was technically deficient in regard to specification 2.19 or otherwise.

In their evaluation of the initial BAFO submitted by San/Bar, contracting officials described San/Bar's offer of the ITT 3100 system as "questionable." In particular, they noted that:

"[T]he BOM [bill of material] submitted for these optional equipments do not include the DTMF trunk converters i.e., refer to ITT/SEL answer to question 3g, Block B, concerning Salient Feature, 2.19. San/Bar can be considered technically non-responsive with the alternate offer of system 3100, because the BOM is not complete, or you can add the additional costs for DTMF trunk converters to their price quotation equivalent to the price increases submitted by ITT/SEL in their 'Best & Final.' Whatever choice is adopted, San/Bar is still technically acceptable in Block B with their Horizon submission."

The contracting officer determined that Siemens/AT&T's second BAFO for block "B" offered an evaluated cost to the government of \$18,117,480.64 for the base and 2 option years. He found that ITT/SEL's proposal for block "B," offering the ITT 3100 electronic key telephone system, offered an evaluated cost of \$18,325,105.55. Although the Army's preliminary calculations indicated that the ITT 3100 system proposed by San/Bar would cost approximately only \$15.95 million, the contracting officer instead evaluated San/Bar's proposal based upon the \$22,115,403.16 evaluated cost of its proposed Horizon system. As explained in the agency memorandum of July 23, San/Bar's alternate proposal--for the ITT 3100 system--was "deemed technically nonresponsive, because the BOM [bill of material] as submitted was substantially incomplete." In particular, the memorandum referred to the agency's previously quoted evaluation of San/Bar's initial BAFO wherein the bill of material was faulted for not including the touch-tone trunk converters necessary to meet specification 2.19. Award was made to Siemens/AT&T as the low, technically acceptable offeror for block "B."

In its subsequent protest to our Office, San/Bar questioned the award for block "B," denying that the ITT 3100 electronic key telephone system which it offered was technically deficient and arguing that, in any case, the Army's failure to mention the purported deficiency during discussions rendered the discussions inadequate.

We concluded in our decision that there was no reason to question the reasonableness of the Army's conclusion that the ITT 3100 system which San/Bar offered to supply at the proposal price did not satisfy all of the specification requirements. We agreed, however, with San/Bar that its failure to offer the additional equipment required to meet the specifications was not such a deficiency as would justify the elimination of San/Bar's offer of the ITT 3100 system from the competitive range without discussions. In particular, we noted that the agency undertook discussions--including at least one question directed at compliance with specification 2.19--with ITT/SEL in regards to its proposed ITT 3100 system even though the technical evaluation of the system indicated that additional clarification, modification or equipment would be required to satisfy the Army's concerns as to compliance with a number of the solicitation specifications, including specification 2.19. Moreover, the Army's evaluation of San/Bar's initial

BAFO, as previously quoted, suggested that the agency's concerns regarding specification 2.19 were readily susceptible of alleviation by the simple addition of touch-tone trunk converters, as apparently offered by ITT/SEL and mentioned by San/Bar. See Phoenix Safety Associates, Ltd., B-216504, Dec. 4, 1984, 84-2 C.P.D. ¶ 621 (where the contracting officer does not make award on the basis of the initial proposals, he should conduct meaningful written or oral discussions with all responsible offerors who submit proposals within the competitive range); cf. Ultra Publicaciones, S.A., B-200676, Mar. 11, 1981, 81-1 C.P.D. ¶ 190; (requirement for meaningful discussions extends to alternate, acceptable proposals within the competitive range); Minority Media Syndicate Inc.; North American Precise Syndicate, Inc., B-200823, B-200823.2, Feb. 12, 1981, 81-1 C.P.D. ¶ 96. Accordingly, we sustained the protest with regard to block "B" on the ground that the Army's failure to conduct meaningful discussions with San/Bar concerning its proposed ITT 3100 system deprived the protester of the opportunity accorded ITT/SEL of revising its proposal for the ITT 3100 system and, thus, deprived the protester of the opportunity for award.

#### Existence of an Alternate Proposal

In our prior decision, we recognized that the Army maintained that San/Bar did not offer the ITT 3100 system with its initial proposal, but instead only offered it with its first BAFO. Although the Army acknowledged that San/Bar provided technical literature and price quotes for the ITT 3100 system with its initial proposal, it pointed out that San/Bar had stated that:

"For the purpose of simplifying the process of issuing Delivery Orders against a Basic Contract, San/Bar Corporation has prepared an optional proposal for review and consideration . . . . This proposal is submitted only as an option for the reviewing authorities and is in no way affiliated with the original solicitation to which San/Bar Corporation has responded."

We rejected the Army's contention, however, holding that:

"The record considered as a whole, however, indicates not only that San/Bar

indeed offered the ITT 3100 system in its initial proposal, but also that contracting officials recognized this fact. In its initial technical proposal, San/Bar clearly stated that:

'The minimum salient technical capabilities for the Electronic Key Telephone System (EKTS) requirements are satisfied through the implementation of the systems listed below.

'San/Bar Corporation - VISION 2000  
ATT Technologies - HORIZON 32A  
ITT - 3100L  
Ericsson - PRODIGY'

San/Bar next described each of the four telephone systems--including the ITT 3100 system--and then discussed how each specification would be met by the systems. Moreover, we note that the Army's own evaluation of initial proposals stated that San/Bar had proposed the ITT 3100 system as an 'ALTERNATE' proposal under block 'B.'

In its request for reconsideration, the Army states that our decision and recommended remedy "all depend on your finding that the Army's 'contracting officials' recognized the existence of San/Bar's alternate proposal of the ITT 3100 system." The Army, however, maintains that the Army personnel who evaluated San/Bar's proposal and found that San/Bar had offered the ITT 3100 system as an alternate lacked the authority to ascertain the existence of an alternate proposal. The Army contends that the contracting officer, which it describes as the only contracting official "empowered to decide what constitutes a proposal," has consistently viewed San/Bar's proposal as not including the ITT 3100 system. Moreover, the Army renews its argument that San/Bar's initial proposal in fact did not include the ITT 3100 system. In support of this argument, it cites the quotation previously relied upon by the Army in this regard and also claims that San/Bar "did not list the ITT 3100 on its BOM [bill of material]" submitted to the agency. Further, the Army questions our use of the phrase "[t]he record considered as a whole," contending that only the actual proposal can be considered in determining what an offeror has proposed.

The fundamental question which we considered in our prior decision, however, was not whether the Army was bound by the conclusions of the Army personnel conducting the technical evaluation of San-Bar's proposal. Rather, the question was whether San-Bar's proposal, as reasonably interpreted, offered the ITT 3100 system as an alternate for consideration for award, cf. Arthur D. Little, Inc., B-213686, Aug. 3, 1984, 84-2 C.P.D. ¶ 149, and, if so, whether the offer was within the competitive range (thereby giving rise to an obligation to conduct meaningful discussions concerning the system).

While a portion of San-Bar's initial proposal, when viewed by itself, could be interpreted as offering the ITT 3100 system only as an option for future consideration, we concluded that the only reasonable interpretation of San-Bar's overall proposal was that the firm was offering the ITT 3100 system as an alternate for consideration for initial award. In the context of the entire proposal, the reference to an "optional proposal" could best be understood as meaning an alternate proposal. At a minimum, the contracting officer should have requested clarification from San-Bar during the ensuing discussions.

We see nothing in the Army's latest submission to change our conclusion that San-Bar was offering the ITT 3100 system as an alternate for consideration for award. As previously indicated, San-Bar provided technical literature and price quotations for the ITT 3100 system; it stated that the block "B" technical requirements for the electronic key telephone systems were satisfied through "implementation" of the ITT 3100 system, as well as through the Horizon and other systems; and the firm described the offered systems--including the ITT 3100 system--and how they would meet the specifications.

Moreover, the Army's position overlooks the fact that San-Bar submitted bills of material--including prices--for the ITT 3100 system with both its first and second BAFO's. This was recognized in the Army's evaluation of San-Bar's first BAFO, wherein it was noted that the "BOM [bill of material] for these optional equipments" did not include the trunk converters needed to meet the requirements of specification 2.19. The Army does not explain why San-Bar offered prices for the ITT 3100 system if it was not offering to supply the system.

Prior Recommendation

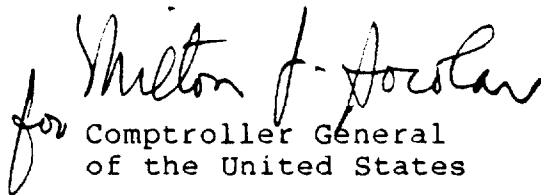
In our prior decision, we recommended that the Army refrain from exercising its options under the contract with Siemens/AT&T as they relate to the 2 option years for block "B." In addition, we found San/Bar to be entitled to recover the costs of filing and pursuing its protest at GAO and of proposal preparation.

San/Bar requests that we clarify our recommendations. In particular, it notes that the goods and services under the contract are to be provided pursuant to delivery orders. It indicates that it views us as recommending "that the option to issue further orders under Block 'B' not be exercised until the requirements of that block are recompleted."

We disagree. San/Bar's proposed interpretation would prevent the Army from acquiring electronic key telephone systems needed during the base year but not yet ordered. Accordingly, our recommendation instead was that the Army refrain from exercising the options for block "B" and from issuing delivery orders in the option years. In making this recommendation, we assumed that the delivery orders issued during the base year will not significantly exceed the Army's estimated requirements as set forth in the solicitation in the absence of urgent and compelling circumstances requiring additional orders.

We decline to change our recommendation.

Our prior decision is affirmed.

  
for Milton F. Jordan  
Comptroller General  
of the United States